

JANUARY 18, 1768.

REPLIES

FOR

DAVID HENDERSON of *Stempster*, Com-
plainer,

TO THE

ANSWERS for Sir *John Sinclair* of *Mey*, Bart.

TH E Answers, now under Consideration, exhibit a glaring Picture of the Effects of that most extraordinary political Infatuation which at present prevails, when a Man may intrude himself into a County where he has neither Property nor Interest, and, by wonderful Finesse, may, to promote his own particular Schemes, set the People of the County by the Ears, and make them enter into keen Disputes with their Neighbours, for which they have not the least Shadow of Pretence, and which can serve no other Purpose but to promote the Jobs of an Interloper.

Nay, this Infatuation shall bring People before this Supreme Court, and Counsel learned in the Law shall be employed to lay before your Lordships, with all their Abilities and all their Ingenuity, elaborate Misrepresentations, which, in a very few Days, are shown to be absolutely void of Truth.

This is indeed the Case as to the Answers against this Complainer, where the eminent Counsel has, as usual, acquitted himself in a very masterly Manner, but where your Lordships will soon see that there is no solid Foundation in point of Fact, *materia superat opus*.

A

The

The preliminary Harangue shall be left with your Lordships without any Reply, except as to the Allegation, that Mr. *Sinclair* of *Ulbster* has, "for several Years past, been struggling with all his Might, partly by fair Means, partly by foul, to get the Bishop's Vassals in *Caithness* to acknowledge him for their Superior, offering them very beneficial Terms if they would agree thereto;" for the Complainer must here do *Ulbster* the Justice to say, that this Allegation has no Foundation whatever, as shall afterwards be fully shown; and he imagines your Lordships will not approve of the Manner in which the Respondent has chosen to express it.

The first Objection is to the Evidence of the Valuation of the Lands claimed on, which, as appears by a Certificate from two of the Commissioners of Supply, stand valued thus:

	£.	s.
<i>Newlands of Ormley</i>	20	0
<i>Thura and Pendicles</i>	148	6
<i>Stempster and Knockdee</i>	248	0
<i>Kirkhouse</i>	8	0

In all £. 424 6

Besides this Certificate, the principal Book of Valuation itself lay on the Table before the Freeholders, as appears by the Answer to the Objection to Colonel *Campbell's* Claim, Page 8th of the Extract of the Proceedings produced. It is true the Valuation-book is not referred to in the Answer for Mr. *Henderson*, for this good Reason, that there was no Objection whatever made to the Evidence of the valued Rent, which was clearly instructed, both by the Certificate and Valuation-book itself lying on the Table, and to which Reference was had in his Claim, as appears from the Extract, Page 17th.

But suppose the Evidence of the valued Rent here depended upon the Certificate of two of the Commissioners of Supply only, it is believed such Certificate, supported as the present is by the Book of Valuation itself, even though it had not been before the Freeholders at the Time, would be sufficient, as the Commissioners of Supply act in this Case as Judges, by special Statute; and, more especially, should the Certificate here be credited by the Freeholders, as it was subscribed by *John Sinclair* of *Affery*, who they all

all knew had been Collector of the Cefs for many Years. But, in the present Cafe, no other Certificate could be had, becaufe Lord *Duffus*, who has the Office of Collector of the Cefs, never does any Part of the Bufinefs which is executed by *John Sutherland* of *Wefter*, the Supply-clerk, who happened, for feveral Days before the *Michaelmas* Meeting, to be confined to his Bed with a Fever, that made his Life very uncertain; and it would be to no Purpofe to apply to Lord *Duffus*, the Collector, fuppofe he was in the ufe of acting as fuch, as he is married to a Coufin-german of Colonel *Scott's*, and, for feveral Days before the *Michaelmas* Meeting, was going about inviting the Freeholders to attend, in order to keep the Complainer and others from the Roll.

It is faid, that the two Commiffioners who fign the Certificate, had not the Books of Supply when they figned it, and therefore could not poffibly remember the Valuation of all the different Lands in the County. This Objection may be true, without having any Effect upon the prefent Queftion; for, although thefe Commiffioners might not remember the Valuation of all the Lands in the County, they certainly might remember the Valuation of fome particular Lands; but the Fact is, that they did not here depend upon fimple Remembrance, for they had an Extract of the Valuation-book, from which the Certificate was made out, for all the Lands in this Qualification are there feparately and diftinctly valued; fo your Lordships fee the real Nature of this Fact, which the Respondent endeavours to make your Lordships believe would militate with invincible Force againft the Complainer.

It is more particularly objected, That this Certificate is not a true one, for that *Ormley* and *Pendicles* are valued at 321 l. 1 s. 2 d. to *Ormley*. and in another Article, *Newlands* of *Ormley* at 20 l. fo that neither apply to *Ormley* or *Bloodmofs*, in the Complainer's Seafine.

When this Objection is explained, it is, with great Submiffion, apprehended, that your Lordships will fee it to be as frivolous as the Respondent affects to confider the Arguments of the Complainer: for, in the Charter, dated in the Year 1749, claimed on in favours of *Ulfter*, there are, among other Lands, the Lands of *Ormley*, lying in the Parifh of *Thurfo*, there are alfo, the Lands of *Ormley*, or *Newlands* of the fame, commonly called *Bloodmofs*, lying in the fame Parifh, which are immediately adjoining to the Lands of *Ormley*.

The

The Respondent attempts to throw some Perplexity before your Lordships, with regard to these Lands of *Ormley*, as if there were a Doubt whether they are the identical Lands stated to Lord *Breadalbane* in the Revaluation Roll of this County in 1702.

That this Matter may be made perfectly clear, your Lordships will please know, that, in the Valuation-book of the County, the Earl of *Breadalbane* is first valued for his *Property* and *improper Wadsets*, lying in different Parishes through the County, without distinguishing in what Parishes either his *Property* or *improper Wadsets* lie, and, among the rest of his *Property* is valued *Ormley and Pendicles* at 321 l. 1 s. 2 d. and the *Newlands of Ormley*, which did not belong to him in *Property*, are valued with the other Lands lying in the Parish of *Thurso*; now, there is no Pendicle of Land within the four Corners of the Valuation-book, called the *Newlands of Ormley*, either in the Parish of *Thurso* or any other Parish in the County; so that there cannot be the least Dispute that this is the Pendicle of Land described in the Charter, as the *Newlands of Ormley or Bloodymofs*, lying in the Parish of *Thurso*; and it was the Commissioners themselves who caused the additional Designation of *Bloodymofs* to be added to the *Newlands of Ormley* in the Certificate, because these Lands are now as well known by the Name of *Bloodymofs*, as the *Newlands of Ormley*.

Qualification
compleat
without the
Newlands of
Ormley.

But separately, suppose this Pendicle was entirely out of the Question, the Complainer has 400 l. of valued Rent, viz.

<i>Stempster and Knockdee</i>	£. 248	8	0
<i>Thura and Pendicles</i>	148	6	0
<i>Kirkhousie</i>	8	0	0
	£. 404	14	0

The Respondent next proceeds to state certain Objections, which, it seems, he is advised, can receive no sufficient Answer.

He is pleased to tell your Lordships, that the *Newlands of Ormley* is one of the Parcels over which *Ulster*, for these several Years past, has been endeavouring to establish a pretended Right of Superiority, but which has been uniformly resisted by the Proprietor of these Lands.

This is a new-coined Story altogether; for the Fact is, that *Ulster's* Right of Superiority to this Pendicle was never once questioned. It is true, indeed, there was a Question with regard to the

the Property; but that Question is now at an end, as *Ulbster* transacted the Dispute, and got a Disposition to the Lands, about ten Years ago, from the deceased *George Sinclair of Gees*, upon which he has been in possession thereof ever since; so that, here again, the Respondent is most unhappily misinformed in Point of Fact.

The next unanswerable Objection is, That Captain *John Sutherland*, of *Holmes's Regiment*, now deceased, was infest in these Lands of *Newlands of Ormley* in *September 1751*, upon a Contract of Wadset from *Ulbster*, wherein the Precept of Seafine, in the Charter now claimed on, was assigned; so that the Precept being thus exhausted, could not be executed again without a new Charter.

Object. as to double Infestment.

Here again the Fact is unluckily the Reverse of what the Respondent alledges; for notwithstanding that the Respondent confidently avers, that Captain *Sutherland* was infest in those very Lands; that it neither was, nor can now be denied, and that it was verified by an Extract of the Seafine. The Truth is, there is no Extract of the Seafine produced, as the Respondent would thereby have had his own Assertion flatly contradicted; for, upon looking into the Seafine, as recorded in the Register, it appears, that Captain *Sutherland* was infest in all the Lands contained in the Contract of Wadset, except the *Newlands of Ormley or Bloody-moss*.

Answer.

But, suppose the Captain had been infest in this Pendicle, as well as in the rest of the Lands wadsetted to him, it would not hurt the present Question: Because the Charter in 1749, in favours of *Ulbster*, containing most Part of the County, contains a Dispensation for taking Infestment at the Castle of *Thurso-East*, or upon the Ground of any Part of the said Lands, as sufficient for the whole, and the Seafine in favours of Captain *Sutherland* was taken, in virtue of this Dispensation, at the Castle of *Thurso-East*, which is null and void, and equal to no Seafine at all; so that the Precept, as to the Lands contained in that Wadset, is unexecute to this Day.—This being the Case, it is needless to take any further notice of this, the most material Objection, which could receive another good Answer, viz. that, independent of this Pendicle, there is 400 *l. Scots* of Valuation, as has been already shewn to your Lordships, though, by Mistake, the contrary appears by the Complaint.

And, so standing the Fact, all the learned Reasoning of the Respondent, supported by respectable Authorities, requires no Re-

B.

ply;

ply; as it is totally foreign to the present Question, where there is not that double Inselement to which all that Reasoning, and all those Authorities refer.

Superiority
cannot be
wadset.

Answer.

The Objection that the Superiority is of its Nature incapable of a proper Wadset, is, with great Submission, such, as it is apprehended, cannot be seriously maintained, however it may afford an Opportunity for Lawyers to show their Ingenuity: And, as so much has been said upon it within these few Days from the Bar, and is to be fully laid before the Court in Memorials, the Complainer shall not take up any of your Lordships Time with the Arguments on that Point, as he rests assured that it is well established, both by the express Words of the Law, and by the Decisions of your Lordships.

Objection,
nominal and
fictitious.

With regard to the Objection, that the Complainer's Right is merely nominal and fictitious, as he paid no Price in consideration of it, and that neither he nor *Ulbster* have ever had, or now have, the smallest Possession of this Superiority in any one Shape.

Answer.

The Complainer does positively deny the Allegation; and he hopes it will appear to your Lordships, that the Respondent's offering a Proof of this, is calculated merely to delay the Decision of the Cause; for if the Complainer has paid no Price, or given no Security, equal to a Wadset of these Lands, and has no Title to the Feu-duties, he could not take the Oath of Possession, which is all the Law requires in a Case of this Kind.

Objection as
to Thura.

The next Objection respects the Superiority of *Thura*, which, it is said, *Ulbster* has taken improperly into his Charters, notwithstanding they hold of the Crown, as come in place of the Bishop of *Orkney*, to whom these Lands belonged; as appears by a Charter from the Bishop to Sir *Donald Mackay* in 1624, and *Seafine* thereon produced, with which it is said the present Proprietor, *George Taylor* of *Thura*, connects; and it is said that *Ulbster*, nor none of his Authors, ever had any Possession of this Superiority; and Mr. *Taylor*, who states himself as Party in this Cause, so far as it respects the Lands of *Thura*, is made to testify his Surprise, that an Attempt of this kind should have been made, after *Ulbster* has repeatedly pressed upon him many tempting Offers, to engage him to acknowledge *Ulbster* as his Superior; and your Lordships are further told, that Mr. *Taylor* has actually raised and executed

a Summons of Reduction and Declarator, for ascertaining his Right of holding these Lands of the Crown.

This Objection can also be explained to the Satisfaction of your Lordships; for as to the Offers made to Mr. Taylor, the Fact is, that, *Ulbster* wished to live in Friendship with that Gentleman, and foresaw that the Expence of a Law-plea, about this small Superiority, might be such as Mr. Taylor would feel, and for that Reason *Ulbster* offered to give him an Entry gratis. This he had Reason to believe Mr. Taylor was thankfully to accept; but it seems the Gentleman has been instructed to view the Matter in another Light, in return to which he may now be assured, that he will pay for his Entry and the bygone Feu-duties.

That this can be done, your Lordships will see from the Answer now to be made to this Objection to the Title upon which the Complainer claimed to be inrolled.

Ulbster's Titles to the Superiority of *Thura* are, a Charter from *Alexander* Bishop of *Caithness*, dated 8th August 1610, in favours of *George* Earl of *Caithness*, proceeding on the Resignation of *Alexander* Earl of *Sutherland*, of a great many Lands in *Caithness*, and in general, "Necnon cum et singularum aliarum villarum, terrarum, et possessionum quarumcunque, nostro episcopatu de *Caithness*, spectan. et pertinen. jacen. infra patriam, vulgo lie country, ejusdem." The whole of the Lands contained in this Charter from the Bishop, are contained in a Charter of the Earldom, &c. under the Great Seal, in favours of the Earl of *Caithness*, anno 1661; and the foresaid general Clause in the Charter from the Bishop, is repeated in this Charter from the Crown, in which the Lands of *Thura* are mentioned.

Titles to the Superiority of *Thura*.

But, further, your Lordships will please be informed, that on the 6th of April 1687, *Murdoch* Bishop of *Orkney*, with Consent of the Dean and Chapter, gave a Charter of the Lands of *Thura* &c. to *John* Earl of *Breadalbane*, to be held Feu, proceeding on the Earl's own Resignation, and confirming his former Rights to these Lands; on this Charter the Earl was infeft, and the Seafine is recorded at *Wick*, the 28th December 1687.

The Charter cannot now be produced, but the Tenor of it appears from an Extract of the Seafine; and these Lands of *Thura* are, after this Charter, as well as since the 1661, in the Charters of the Earldom of *Caithness*, in favours of *Ulbster*, and his Authors, as said is.

But

Improbation.

But your Lordships, it is, with all Submission, apprehended, will be fully satisfied, as to the Validity of *Ulbster's* Titles, and the Insufficiency of the Objection made to the Complainer, founded on the Charter from the Bishop to Sir *Donald Mackay*, when you are informed, that, in the Year 1725, the Earl of *Breadalbane* and *Ulbster's* Father raised a Process of Improbation against their Vassals in *Caithness*; and particularly against *Sinclair*, then Proprietor of *Thura*, *Kirkhouse*, and *Tostkemp*; and that, in this Process, *Richard Sinclair*, then of *Thura*, produced the Charter from the Bishop to *Donald Mackay*, and Seafine thereon before mentioned; but, he connected no Title whatever with *Donald Mackay*; for the oldest Writing produced for him, except the Charter and Seafine from the Bishop, was a Disposition from *James Sinclair* of *Tostkemp*, to *William Sinclair*, his Son, of the Lands of *Thura*, and others, dated 3d March 1651, but, upon which, no Infeftment followed; and, the first Infeftment, in favours of this *Thura's* Authors, is on 23d December 1720, in favours of the said *Richard Sinclair*, upon a Disposition from his Brother, Captain *John Sinclair*, dated 8th November 1702.

In this Improbation, there was Certification pronounced *contra non producta*; and, of course, against any Writings that would connect *Thura's* Author, *Sinclair* of *Tostkemp*, with Sir *Donald Mackay*, who obtained the Charter from the Bishop 1624; and, it was never insisted on for *Thura* in this Process, that the Writs he produced excluded *Ulbster's* Right of Superiority.

Thus standing the Titles of the Lands of *Thura*, the Complainer, with great Submission, hopes, it will be clear to your Lordships, that the Complainer, as in Right of the Earl of *Breadalbane*, who got a Charter of these Lands from the Bishop, and since from the Crown, can force the present Proprietor of *Thura* to take an Entry from him, and pay the bygone Feu-duties, because the Charter to Sir *Donald Mackay* in 1624, without any Confirmation from the Crown, cannot be available to Mr. *Taylor*, seeing his Predecessors does not connect with that Charter. On the contrary, it must be presumed, that the Bishop got back the Feu-lands, or that the Earl of *Breadalbane* or his Author acquired Right to them, as the Bishop in the Year 1687, of-new disposed these Lands to the Earl of *Breadalbane*, and confirms his former Rights thereof, whereby the Complainer and *Ulbster* are now become the Crown's Vassals in these Lands.

But,

But, at any rate, this is a Matter not cognoscible before the Freeholders, nor can Mr. *Taylor*, stating himself as a Party in this Cause, be any Reason, why your Lordships, as a Court of Review, should affirm the Judgment of the Freeholders, which, although now defended upon many new Points, with the great Address of able Council, must, it is humbly apprehended, be tried upon the Merits of what was before the Freeholders at their Meeting, where the Complainer produced his Charter from the Crown, with Infestment. If indeed Mr. *Taylor* shall prevail in the Action, which it is said he has raised against *Ulbster*, that will be an Alteration of Circumstances, sufficient to turn the Complainer off the Roll. But it is humbly submitted to your Lordships, if the mere raising of such an Action should be sufficient to keep the Complainer off the Roll, more especially, after the Narrative which your Lordships have had concerning the Rights of *Thura*, and when it is also considered, that, if Mr. *Taylor* has any Writings, to connect him with, or give him the Benefit of, the Charter to Sir *Donald Mackay*, they stand reduced by the aforesaid Decreet of Certification, in which his Author did not pretend to hold his Lands of the Crown.

And here the Complainer begs leave to explain to your Lordships the long Possession had of these Lands, without paying the Feu-duties, on which the Respondent would found a Claim of positive Prescription. The Fact is, that in the 1672, the Estate of *Caithness* was sold by the Earl thereof to the Earl of *Breadalbane*; some Years after which the Earl of *Caithness* raised a Reduction of the Earl of *Breadalbane*'s Right which was not settled till the 1751; so that the Feu-duties have not been exacted with all the Regularity they would have been, had Matters been without any Controversy. But your Lordships have seen, that there was a Process of Improbation, which, of itself, would be sufficient to interrupt the Prescription; and there were besides several Processes, at different Periods, against the Vassals, for Non-entry, and Payment of Tiend and Feu Duties; so that this Plea is also without any Foundation in Fact.

Having thus, it is hoped, sufficiently refuted the long and elaborate Objections contained in the Answers, the Complainer will beg leave to reply more fully to one Objection, of which he has already taken some Notice.

It is said in the Answers, that *Ulbster* has been in vain attempting to get the Bishop's Vassals to acknowledge his Right, because:

G.

he:

[10]

he thought fit to take the Bishop's Lands into his Charters ; and your Lordships are told, that so great is *Ulbster's* Anxiety on this Head, that he has been struggling with all his Might, partly by fair Means, *partly by foul*, to bring this about.

This is as false an Averment as any of these that have been made in all the Answers upon this Occasion ; for this is the first and single Instance in the whole County, of any of the Bishop's Vassals disputing *Ulbster's* or his Authors Right to the Superiority of the Bishop's Lands ; on the contrary, every Vassal the Bishop had, who were very numerous, have acknowledged *Ulbster's* Right of Superiority of the Bishop's Lands ; Sir *Robert Gordon*, and even Colonel *Scott* himself, and many more in the County, more powerful, and not less intelligent than Mr. *Taylor*, are on the Roll on the Bishop's Lands, the Superiorities whereof were purchased, either by them or their Authors, from *Ulbster*, and the Right Honourable Lord *Fortrose* has a Parchment Qualification on the Bishop's Lands, purchased several Years ago from *Ulbster*, on which it is said, he proposes to get on the Roll, and, with this valuable Estate, to represent the County in Parliament.

The Complainer therefore does humbly hope, that your Lordships will see good Cause, to ordain him to be added to the Roll, to award him the statutory Penalty, and full Costs of Suit ; and, in respect that the Answers to his Petition and Complaint are so destitute of Fact, and contain Insinuations, as void of Foundation, as they are injurious, it is further hoped, that your Lordships will testify your Displeasure in such Manner as you shall think they deserve.

In respect whereof, &c.

JAMES BOSWELL.